

**FINANCING AGREEMENT**

**among**

**County of San Bernardino,  
as Issuer**

**and**

**BNY Western Trust Company,  
as Trustee**

**and**

**WLP Parkview Place Apartments,  
a Delaware limited liability company,  
as Borrower**

**Relating to**

**\$5,220,000  
VARIABLE RATE DEMAND MULTIFAMILY HOUSING  
MORTGAGE REVENUE REFUNDING BONDS,  
2004 SERIES A  
(PARKVIEW PLACE APARTMENTS)**

**Dated as of May 1, 2004**

## **ARTICLE I**

### **INCORPORATION OF RECITALS, DEFINITIONS AND RULES OF CONSTRUCTION**

SECTION 1.1	Incorporation of Recitals. ....	2
SECTION 1.2	Definitions. ....	2
SECTION 1.3	Rules of Construction. ....	2

## **ARTICLE II**

### **THE MORTGAGE LOAN**

SECTION 2.1	Amount and Source of Loan. ....	2
SECTION 2.2	Note and Security Instrument. ....	2
SECTION 2.3	Costs of Issuance Deposit. ....	2
SECTION 2.4	Credit Facility. ....	3
SECTION 2.5	Payment of Fees, Costs and Expenses. ....	3
SECTION 2.6	Liability for Fees, Costs and Expenses. ....	4
SECTION 2.7	Borrower's Obligations Upon Tender of Bonds. ....	4
SECTION 2.8	Redemption Premium. ....	4
SECTION 2.9	Obligation of the Borrower to Pay Deficiencies. ....	4
SECTION 2.10	Borrower's Approval of Transaction Documents. ....	4

## **ARTICLE III**

### **NATURE OF BORROWER'S OBLIGATIONS; SECURITY FOR OBLIGATIONS**

SECTION 3.1	Obligations of the Borrower Unconditional. ....	4
SECTION 3.2	Personal Liability of Borrower. ....	5
SECTION 3.3	Obligations Unsecured. ....	5
SECTION 3.4	Certain Obligations Personal to the Borrower. ....	5

## **ARTICLE IV**

### **REPRESENTATIONS AND WARRANTIES**

SECTION 4.1	Representations and Warranties of the Issuer. ....	5
-------------	--	---

## **ARTICLE V**

### **COVENANTS OF THE BORROWER**

SECTION 5.1	Compliance With Laws. ....	6
SECTION 5.2	Maintenance of Legal Existence. ....	7
SECTION 5.3	Access to Mortgaged Property and Records. ....	7
SECTION 5.4	Reports and Information. ....	7
SECTION 5.5	Tax Covenants. ....	8

SECTION 5.6	Notice of Certain Events.....	8
-------------	-------------------------------	---

## **ARTICLE VI**

### **INDEMNIFICATION**

SECTION 6.1	Borrower's Obligations. ....	8
SECTION 6.2	Defense of Claims.....	10
SECTION 6.3	Borrower's Continuing Obligations. ....	10

## **ARTICLE VII**

### **EVENTS OF DEFAULT AND REMEDIES**

SECTION 7.1	Events of Default. ....	10
SECTION 7.2	Remedies upon an Event of Default. ....	11
SECTION 7.3	No Levy or Other Execution Against Mortgaged Property. ....	11
SECTION 7.4	Waiver and Annulment. ....	11
SECTION 7.5	No Remedy Exclusive. ....	12
SECTION 7.6	No Waiver.....	12
SECTION 7.7	No Notices. ....	12
SECTION 7.8	Expenses. ....	12

## **ARTICLE VIII**

### **MISCELLANEOUS**

SECTION 8.1	Notices. ....	12
SECTION 8.2	Amendment.....	12
SECTION 8.3	Entire Agreement. ....	12
SECTION 8.4	Binding Effect.....	13
SECTION 8.5	Further Assurances and Corrective Instruments. ....	13
SECTION 8.6	Severability. ....	13
SECTION 8.7	Execution in Counterparts. ....	13
SECTION 8.8	Governing Law. ....	13
SECTION 8.9	WAIVER OF JURY TRIAL. ....	13
SECTION 8.10	Limited Liability of the Issuer. ....	13
SECTION 8.11	Term of this Agreement. ....	14
SECTION 8.12	References to the Credit Provider.....	14

## **FINANCING AGREEMENT**

**THIS FINANCING AGREEMENT** dated as of **May 1, 2004**, is among the **County of San Bernardino**, a political subdivision of the State of California (“Issuer”), and **WLP Parkview Place Apartments, LLC**, a Delaware limited liability company (“Borrower”), and **BNY Western Trust Company**, a California state banking corporation (“Trustee”), not in its individual or corporate capacity, but solely as Trustee under the Indenture].

### **ARTICLE I** **INCORPORATION OF RECITALS,** **DEFINITIONS AND** **RULES OF CONSTRUCTION**

**SECTION 1.1** **Incorporation of Recitals.** The Recitals to the Indenture are incorporated into and made a part of this Agreement.

**SECTION 1.2** **Definitions.** All capitalized terms used in this Agreement have the meanings given to those terms in the Indenture or elsewhere in this Agreement unless the context or use clearly indicates a different meaning.

**SECTION 1.3** **Rules of Construction.** The rules of construction set forth in Section 1.2 of the Indenture shall apply to this Agreement in their entirety, except that in applying such rules, the term “Agreement” shall be substituted for the term “Indenture”.

### **ARTICLE II** **THE LOAN**

**SECTION 2.1** **Amount and Source of Loan.** The Issuer has authorized the issuance of the Bonds in the aggregate principal amount of \$5,220,000. The Issuer agrees to make the Loan in the amount of \$5,220,000 to the Borrower with the Net Bond Proceeds. Upon the issuance and delivery of the Bonds, the Issuer will deliver the Net Bond Proceeds to the Trustee. The Loan shall be deemed made in full upon deposit of the Net Bond Proceeds into the Loan Fund. The Borrower accepts the Loan from the Issuer upon the terms and conditions set forth in this Agreement and the Loan Documents, subject to the Indenture, the Regulatory Agreement and the Assignment. Disbursements will be made from the Loan Fund as provided in the Indenture. The Borrower agrees to have the proceeds of the Loan applied and disbursed directly or indirectly to provide for the current refunding of the Prior Bonds.

**SECTION 2.2** **Note and Security Instrument.** The Loan shall be evidenced by, payable in accordance with, and bear interest at the rates and on the terms provided in, the Note and secured by the Security Instrument.

**SECTION 2.3** **Costs of Issuance Deposit.** Prior to the issuance of the Bonds, the Borrower shall pay to the Trustee the Costs of Issuance Deposit for deposit into the Costs of Issuance Fund. The Issuer shall have no obligation to issue the Bonds and to fund the Loan unless and until the Borrower delivers the Costs of Issuance Deposit.

**SECTION 2.4 Credit Facility.** The Borrower agrees to cause credit enhancement for the Loan or the Bonds and liquidity support for the Bonds to be in effect in the amounts and during the periods as required by the Indenture. From time to time, the Borrower may arrange for the delivery to the Trustee of one or more Alternate Credit Facilities meeting the requirements of the Indenture in substitution for the Credit Facility then in effect.

**SECTION 2.5 Payment of Fees, Costs and Expenses.** The Borrower shall pay when due, without duplication, the fees, expenses and other sums specified in this Section.

(a) **Issuer.** The Administration Fee in an amount equal to 0.125 percent per annum, of the outstanding principal amount of the Bonds and all costs and expenses incurred by the Issuer at any time in connection with the Bonds.

(b) **Trustee.** The Trustee's acceptance fee, if any, which shall be paid on the Closing Date, the Trustee's Annual Fee, and all advances, out-of-pocket expenses, fees, costs and other charges reasonably and necessarily incurred by the Trustee under the Indenture and Extraordinary Items.

(c) **Tender Agent.** The fees, costs and expenses of the Tender Agent, all advances, out-of-pocket expenses, fees, costs and other charges reasonably and necessarily incurred by the Tender Agent in performing its duties as Tender Agent under the Indenture and the Pledge Agreement.

(d) **Remarketing Agent.** The fees, costs and expenses of the Remarketing Agent and the costs and expenses of the Remarketing Agent which the Borrower is obligated to pay under the Remarketing Agreement.

(e) **Rebate Analyst.** The annual or other periodic fees of the Rebate Analyst.

(f) **Rating Agency.** The annual rating maintenance fee of each Rating Agency.

(g) **Costs of Issuance.** All Costs of Issuance.

(h) **Bond Costs.** All costs of registering, printing, reprinting, preparing and delivering any replacement bonds required under the Indenture and in connection with the registration, printing, reprinting or transfer of Bonds.

(i) **Adjustment or Conversion of Interest Rate; Tender, Purchase, Remarketing or Reoffering of Bonds.** All fees, costs and expenses of any change in Mode or of any tender, purchase, remarketing or reoffering of any Bonds. The fees, costs and expenses of any tender, purchase, remarketing or reoffering of Bonds must be paid by the Borrower in advance in accordance with the Remarketing Agreement or other agreement relating to the remarketing or reoffering of the Bonds.

The Borrower agrees to timely honor any demand for payment by the Trustee pursuant to Section 5.7(b) of the Indenture on account of any insufficiency in the Fees Account.

**SECTION 2.6     Liability for Fees, Costs and Expenses.** Neither the Issuer nor the Trustee shall have any obligation to pay any of the fees, costs or expenses referred to in Section 2.5.

**SECTION 2.7     Borrower's Obligations Upon Tender of Bonds.** If any Tendered Bond is not remarketed on any Tender Date and a sufficient amount is not available in the Bond Purchase Fund for the purpose of paying the purchase price of such Bond, the Borrower will cause to be paid to the Trustee pursuant to the Credit Facility or otherwise pay by the applicable times provided in the Indenture, an amount equal to the principal amount of all Bonds tendered and not remarketed, together with interest accrued to the Tender Date.

**SECTION 2.8     Redemption Premium.** The Borrower shall pay all redemption premiums, if any, payable with respect to each redemption of any of the Bonds. The Borrower shall make each such payment, or cause such payment to be made, in Available Moneys.

**SECTION 2.9     Obligation of the Borrower to Pay Deficiencies.** The Borrower shall pay any deficiency resulting from any loss due to a default under any investment in any Fund or Account or a change in value of any investment.

**SECTION 2.10   Borrower's Approval of Transaction Documents.** The Borrower acknowledges that it participated in the drafting and negotiation of the Transaction Documents and approves and agrees to each of the provisions of the Transaction Documents. The Borrower agrees that it is bound by, shall adhere to, and shall have the rights set forth by, the Indenture.

### **ARTICLE III**

#### **NATURE OF BORROWER'S OBLIGATIONS; SECURITY FOR OBLIGATIONS**

**SECTION 3.1     Obligations of the Borrower Unconditional.** To the fullest extent permitted by law, the obligations of the Borrower to make all payments and perform its other obligations under this Agreement shall be absolute, unconditional and irrevocable, shall be paid and performed strictly in accordance with the applicable Transaction Documents under all circumstances, including, without limitation, the following circumstances: (i) any invalidity or unenforceability of the Credit Facility or any of the other Transaction Documents; (ii) any amendment or waiver of, or any consent to departure from, the terms of the Credit Facility or any of the other Transaction Documents, any extension of time or other modification of the terms and conditions for any act to be performed in connection with the Credit Facility or any of the other Transaction Documents; (iii) the existence of any claim, set-off, defense or other right which the Borrower may have at any time against the Issuer, the Trustee, the Tender Agent, the Credit Provider, the Loan Servicer, the Remarketing Agent or any other Person, whether in connection with any of the Transaction Documents, the Mortgaged Property, or any unrelated transaction; (iv) the surrender or impairment of any security for the performance or observance of any of the agreements or terms of any of the Transaction Documents; (v) defect in title to the Mortgaged Property, any act or circumstance that may constitute failure of consideration, destruction of, damage to or condemnation of the Mortgaged Property, commercial frustration of purpose, or any change in the tax or other laws of the United States of America or of the State or any political subdivision of either; (vi) the breach by the Issuer, the Trustee, the Tender Agent, the Remarketing Agent, the Credit Provider, the Loan Servicer or any other Person of any of its

obligations under any Transaction Document; or (vii) any other circumstance, happening or omission whatsoever, whether or not similar to any of the foregoing.

**SECTION 3.2 Personal Liability of Borrower.** Except as provided in the last sentence of this Section, the obligations of the Borrower under this Agreement and the obligations of the Borrower under the Regulatory Agreement to pay money, including the obligations of the Borrower with respect to the Reserved Rights, shall be (i) general obligations of the Borrower with recourse to the Borrower personally, and (ii) subordinate and junior in priority, right of payment and all other respects to any and all obligations of the Borrower under the Loan Documents and to the Credit Provider under or in respect of the Credit Facility Documents. Nothing in this Section shall apply to the obligations of the Borrower under any of the Loan Documents.

**SECTION 3.3 Obligations Unsecured.** All obligations of the Borrower under this Agreement and under the Regulatory Agreement, including the obligations of the Borrower with respect to the Reserved Rights, shall not be secured by the Security Instrument and shall not constitute a lien on the Mortgaged Property in any manner.

**SECTION 3.4 Certain Obligations Personal to the Borrower.** No subsequent owner of the Mortgaged Property (including the Credit Provider as a result of a foreclosure, a deed in lieu of foreclosure or comparable conversion of the Loan) shall be liable for any breach or default of any obligation of any prior owner under the Regulatory Agreement or this Agreement, including any payment or indemnification obligation. The owner of the Mortgaged Property at the time any default or breach occurs shall remain liable for any and all damages occasioned by such default or breach even after such Person ceases to be the owner. Upon seeking to collect such damages, neither the Issuer nor the Trustee shall have recourse against or the right to levy against or otherwise collect on any judgment from the Mortgaged Property.

## **ARTICLE IV**

### **REPRESENTATIONS AND WARRANTIES**

**SECTION 4.1 Representations and Warranties of the Issuer.** The Issuer represents and warrants that:

(a) The Issuer is a **political subdivision of the State of California**, duly organized and validly existing under the constitution and laws of the State.

(b) The Issuer has complied with the Act and the constitution and laws of the State that are prerequisites to the closing of the transactions provided for in the Bond Documents.

(c) The issuance of the Bonds to provide funding for the Loan is intended to serve the public interest and will further the purposes of the Act including the provision of decent, safe and sanitary rental housing units for persons and families of low or moderate income; to accomplish the foregoing, the Issuer intends to issue the Bonds on the terms set forth in the Indenture and to use the proceeds derived from the sale of the Bonds as specified in the Indenture and this Agreement.

(d) The Bonds have been duly executed and delivered by the Issuer, and upon authentication by the Trustee, will constitute legal, valid and binding special limited obligations of the Issuer, enforceable against the Issuer in accordance with their terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally and general principles of equity.

(e) The Issuer has the full legal right, power and authority to execute and deliver the Issuer Documents, and to carry out its obligations under each of those documents. The issuance of the Bonds and the execution, delivery and performance of the Issuer Documents have been duly authorized by the Issuer. Each of the Issuer Documents has been duly executed and delivered by the Issuer, and, upon execution and delivery by the other party or parties to the Issuer Documents, is a legal, valid and binding obligation of the Issuer, enforceable against the Issuer in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally and general principles of equity.

(f) Neither the execution and delivery of, nor the fulfillment of or compliance with the terms or conditions of, the Issuer Documents violates the constitution or laws of the State or any judgment, order, writ, injunction or decree to which the Issuer is subject, or conflicts in any material respect with, or results in a material breach of, or material default under, any agreement or instrument to which the Issuer is now a party or by which it is bound.

(g) Except as otherwise provided in the Indenture and the Assignment, the Issuer has not created any debt, lien or charge upon the Trust Estate, and has not made any pledge or assignment of or created any encumbrance on the Trust Estate.

(h) The Issuer has complied with all material provisions of the Act applicable to the Bonds and the transactions provided for in the Issuer Documents.

(i) No litigation or administrative action of any nature is pending against the Issuer (i) seeking to restrain or enjoin the issuance of the Bonds or the execution and delivery of the Issuer Documents, (ii) questioning the proceedings or authority relating to the Bonds or any other Issuer Document or (iii) questioning the existence or authority of the Issuer or that of its present or former members or officers and, to the best knowledge of the Issuer, none of the foregoing is threatened.

(j) The Bonds are being issued under the Indenture, and are secured by the Trust Estate. Under the Indenture the Issuer's interest in this Agreement (other than the Reserved Rights) and the revenues and receipts to be derived by the Issuer pursuant to this Agreement, are pledged and assigned to the Trustee as security for payment of the principal of and interest and any premium on the Bonds.

## **ARTICLE V**

### **COVENANTS OF THE BORROWER**

**SECTION 5.1** **Compliance With Laws.** The Borrower will comply with all laws, ordinances, regulations and requirements of any duly constituted public authorities which may be applicable to the Mortgaged Property and all recorded lawful covenants and agreements relating



to or affecting the Mortgaged Property, including all laws, ordinances, regulations, requirements and covenants pertaining to health and safety, construction of improvements on the Mortgaged Property, fair housing, zoning and land use, and Leases (as such term is defined in the Security Instrument). The Borrower also will comply with all applicable laws that pertain to the maintenance and disposition of tenant security deposits. The Borrower will at all times maintain records sufficient to demonstrate compliance with the provisions of this Section. The Borrower will take appropriate measures to prevent, and will not engage in or knowingly permit, any illegal activities at the Mortgaged Property that could endanger tenants or visitors, result in damage to the Mortgaged Property, result in forfeiture of the Mortgaged Property, or otherwise materially impair the lien created by the Security Instrument. The Borrower represents and warrants that no portion of the Mortgaged Property has been or will be purchased with the proceeds of any illegal activity. Nothing contained in this Section is intended to modify or limit any provisions of the Regulatory Agreement or any Loan Document.

**SECTION 5.2**     **Maintenance of Legal Existence.** The Borrower will maintain its existence, continue to be duly qualified to do business in the State and will not terminate or dissolve. With the prior written consent of the Issuer, the Borrower may consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it, but subject to the satisfaction of the following conditions: (i) the entity resulting from or surviving such merger or consolidation (if other than the Borrower) (“**Surviving Entity**”) is duly organized and existing in good standing and qualified to do business in the State, (ii) if the Borrower does not survive the consolidation or merger, the Surviving Entity expressly assumes in writing all of the Borrower’s obligations under this Agreement and the other Borrower Documents and (iii) the Borrower delivers an opinion of Bond Counsel to the effect that such consolidation or merger will not cause interest on the Bonds to be included in gross income for federal income tax purposes.

**SECTION 5.3**     **Access to Mortgaged Property and Records.** Subject to reasonable notice, the Issuer and the Trustee and the respective duly authorized agents of each have the right, during normal business hours, to enter the Mortgaged Property and any location containing records relating to any of the Borrower, the Mortgaged Property, the Loan and the Transaction Documents, to inspect, audit and make copies of the Borrower’s records or accounts pertaining to the Borrower, the Mortgaged Property, the Loan, the Transaction Documents, and the Borrower’s compliance with the Transaction Documents, and to require the Borrower, at the Borrower’s sole expense, to furnish such documents to the Issuer and the Trustee, as the Issuer or the Trustee from time to time deems necessary in order to determine that the Borrower is in compliance with the Transaction Documents and to make copies of any records that the Issuer or the Trustee, or their respective duly authorized agents, may reasonably require. The Borrower will make available to the Issuer and the Trustee such other information concerning the Borrower, the Mortgaged Property, the Loan and the Transaction Documents as any of them may reasonably request.

**SECTION 5.4**     **Reports and Information.** The Borrower will file such certificates and other reports with the Issuer and the Trustee as are required by the Transaction Documents. The Borrower will provide to the Issuer all information necessary to enable the Issuer to complete and file all forms and reports required by the laws of the State and the Code in connection with the Mortgaged Property and the Bonds.

**SECTION 5.5 Tax Covenants.** The Borrower covenants that it will comply with the requirements and conditions of the Tax Certificate and the Regulatory Agreement. Without limiting the foregoing and notwithstanding anything to the contrary in this Agreement, the Borrower will not take, or permit to be taken on its behalf, any action which would cause interest on the Bonds to be included in gross income for federal income tax purposes and will take such reasonable action as may be necessary to continue such exclusion from gross income, including:

(a) the Borrower will not use the proceeds of the Bonds, or any other funds which may be deemed to be proceeds of the Bonds pursuant to Section 148 of the Code, in a manner which will cause the Bonds to be “arbitrage bonds” within the meaning of such Section, and will comply with the requirements of such Section throughout the term of the Bonds;

(b) the Borrower will prepare and file any statements required to be filed by it in order to maintain such exclusion; and

(c) the Borrower will pay to the United States any amount required to be paid by the Issuer or the Borrower pursuant to Section 148(f) of the Code, at the times, in the amounts and at the places required in order to maintain the exclusion of interest on the Bonds from gross income for federal income tax purposes.

The Borrower irrevocably authorizes and directs the Issuer, the Trustee and any other agent designated by the Issuer to make payment of such amounts from funds of the Borrower, if any, held by the Issuer, the Trustee, or any agent of the Issuer or the Trustee. The Borrower further covenants and agrees that, pursuant to the requirements of Treasury Regulation Section 1.148-1(b), it (or any related person contemplated by such regulations) will not purchase Bonds in an amount related to the amount of the Loan, other than Pledged Bonds.

**SECTION 5.6 Notice of Certain Events.** The Borrower will advise the Issuer and the Trustee promptly in writing of the occurrence of any default by the Borrower in the performance or observance of any covenant, agreement, representation, warranty or obligation of the Borrower set forth in this Agreement or in any of the other Borrower Documents, or of any Event of Default or Potential Default under this Agreement known to it or of which it has received notice, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect to such default. Such notice shall be given promptly, and in no event less than ten Business Days after the Borrower receives notice or has knowledge of the occurrence of any such event. The Borrower further agrees, that it will give prompt written notice to the Trustee if insurance proceeds or condemnation awards are received with respect to the Mortgaged Property.

## **ARTICLE VI** **INDEMNIFICATION**

**SECTION 6.1 Borrower’s Obligations.** The Borrower releases the Issuer, the Trustee, the Tender Agent and their respective officers, directors, agents, officials, employees (and, as to the Issuer, members of its governing body) and any person who controls the Issuer, the Trustee or the Tender Agent within the meaning of the Securities Act of 1933, from, and covenants and agrees to indemnify, hold harmless and defend the Issuer, the Trustee, the Tender Agent and

their respective officers, directors, employees, agents, members of its governing body, officials and any person who controls such party within the meaning of the Securities Act of 1933 and employees and each of them (each an **'Indemnified Party'**) from and against, any and all losses, claims, damages, liabilities and expenses (including attorneys' fees and expenses), taxes, causes of action, suits and judgments of any nature, joint or several, by or on behalf of any person arising out of:

- (a) the approval of financing for the Mortgaged Property or the making of the Loan;
- (b) the issuance and sale, resale or remarketing of any Bonds or any certifications or representations made by any person other than the party seeking indemnification in connection therewith, including, but not limited to, any (i) statement or information made by the Borrower with respect to the Borrower or the Mortgaged Property in any offering document or materials regarding the Bonds, the Mortgaged Property or the Borrower or in the Tax Certificate of the Borrower or in any other certificate executed by the Borrower which, at the time made, is misleading, untrue or incorrect in any material respect, (ii) untrue statement or alleged untrue statement of a material fact relating to the Borrower or the Mortgaged Property contained in any offering material relating to the sale of the Bonds, as from time to time amended or supplemented, or arising out of or based upon the omission or alleged omission to state in such offering material a material fact relating to the Borrower or the Mortgaged Property required to be stated in such offering material or necessary in order to make the statements in such offering material not misleading, (iii) failure to properly register or otherwise qualify the sale of the Bonds or failure to comply with any licensing or other law or regulation which would affect the manner in which or to whom the Bonds could be sold;
- (c) the interpretation, performance, enforcement, breach, default or amendment of the Bond Documents, the Loan Documents or any other documents relating to the Mortgaged Property or the Bonds or in connection with any federal or state tax audit, or any questions or other matters arising under such documents;
- (d) the Borrower's failure to comply with any requirement of this Agreement or the Regulatory Agreement;
- (e) the condition of the Mortgaged Property (environmental or otherwise), including any violation of any law, ordinance, court order or regulation affecting the Mortgaged Property or any part of it;
- (f) any damage or injury, actual or claimed, of whatsoever kind, cause or character, to property (including loss of use of property) or persons, occurring or allegedly occurring in, on or about the Mortgaged Property or arising out of any action or inaction of the Borrower or any of its agents, servants, employees or licensees, whether or not related to the Mortgaged Property, or resulting from the acquisition, construction, design, rehabilitation, repair, operation, use or management of all or any part of the Mortgaged Property;
- (g) the Trustee's acceptance or administration of the trusts created by, and the exercise of its powers or duties under, the Indenture or under this Agreement, the Regulatory

Agreement, the Credit Facility or any other agreements in connection with such agreements to which it is a party; and

(h) to the extent not mentioned in any of the preceding subsections, any cause whatsoever in connection with transactions provided for in this Agreement and the other Transaction Documents or otherwise in connection with the Mortgaged Property, the Bonds or the execution or amendment of any document relating to the Bonds or the Mortgaged Property.

This indemnification shall extend to and include, without limitation, all reasonable costs, counsel fees, expenses and liabilities incurred in connection with any such claim, or proceeding brought with respect to such claim, except (i) in the case of the foregoing indemnification of the Trustee or any of the Indemnified Parties, to the extent such damages are caused by the negligence or willful misconduct of such Person, and (ii) in the case of the foregoing indemnification of the Issuer or any of the Indemnified Parties, to the extent such damages are caused by the willful misconduct of such Person.

**SECTION 6.2 Defense of Claims.** In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought under Section 6.1, the Borrower, upon written notice from the Indemnified Party, will assume the investigation and defense of the action or proceeding, including the engagement of counsel selected by the Borrower, subject to the approval of the Indemnified Party in such party's sole discretion, and shall assume the payment of all expenses related to the action or proceeding, with full power to litigate, compromise or settle the same in its sole discretion; provided, however, that the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement. Each Indemnified Party shall have the right to engage separate counsel in any action or proceeding and participate in the investigation and defense of such action or proceeding, and the Borrower shall pay the reasonable fees and expenses of such separate counsel if (i) the Indemnified Party determines that a conflict exists between the interests of the Indemnified Party and the interests of the Borrower or (ii) such separate counsel is engaged with the approval of the Borrower, which approval shall not be unreasonably withheld, conditioned or delayed.

**SECTION 6.3 Borrower's Continuing Obligations.** Notwithstanding any transfer of the Mortgaged Property to another owner in accordance with the Regulatory Agreement, the Borrower shall remain obligated to indemnify each Indemnified Party pursuant to this Article VI for all matters arising prior to such transfer, and, as a condition to the release of the transferor on and after the transfer date, the transferee must assume the obligations of the Borrower under this Agreement and the other Borrower Documents on and after the transfer date. Each Indemnified Party's rights under this Article VI shall survive the termination of this Agreement, the payment of the Loan and the payment or defeasance of the Bonds.

## **ARTICLE VII**

### **EVENTS OF DEFAULT AND REMEDIES**

**SECTION 7.1 Events of Default.** The occurrence of any one or more of the following events shall constitute an Event of Default under this Agreement:

(a) The Borrower fails to pay when due any amount payable by the Borrower under this Agreement.

(b) The Borrower fails to observe or perform any covenant or obligation in this Agreement on its part to be observed or performed for a period of 30 days after receipt of written notice from the Trustee specifying such failure and requesting that it be remedied, provided, however, that if the failure cannot be corrected within such period, it shall not constitute an Event of Default if the failure is correctable without material adverse effect on the validity or enforceability of the Bonds or on the exclusion from gross income, for federal income tax purposes, of the interest on the Bonds, and if corrective action is instituted by the Borrower within such period and diligently pursued until the failure is corrected, and provided further that any such failure is cured within 90 days of receipt of notice of such failure.

(c) The Credit Provider provides written notice to the Trustee of an Event of Default under this Agreement by reason of the occurrence of an Event of Default under the Reimbursement Agreement. No Event of Default under the Reimbursement Agreement shall constitute a default under this Agreement unless specifically declared to be so by the Credit Provider. The Credit Provider shall make such declaration by written notice to the Trustee.

**SECTION 7.2 Remedies upon an Event of Default.** Subject to the Assignment, whenever any Event of Default occurs and is continuing under this Agreement, the Issuer may take one or any combination of the following remedial steps:

(a) by written notice to the Borrower, declare all amounts then due and payable on the Note to be immediately due and payable;

(b) exercise any of the rights and remedies provided in the Loan Documents; and

(c) take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and afterward to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Agreement.

**SECTION 7.3 No Levy or Other Execution Against Mortgaged Property.** Neither the Issuer nor the Trustee shall have any right to levy, execute or enforce any judgment in respect of the Borrower's obligations under this Agreement, including the Reserved Rights, against the Mortgaged Property or any other property of the Borrower which secures the obligations of the Borrower under the Loan or to the Credit Provider under any of the Credit Facility Documents.

**SECTION 7.4 Waiver and Annulment.** Unless the Credit Provider otherwise consents in writing, neither the Issuer nor the Trustee may waive or annul any Event of Default under this Agreement unless (i) all amounts which would then be payable under this Agreement by the Borrower if such Event of Default had not occurred and was not continuing are paid by or on behalf of the Borrower, and (ii) the Borrower also performs all other obligations in respect of which it is then in default under this Agreement and pays the reasonable charges and expenses of the Issuer and the Trustee, including reasonable attorneys' fees and expenses paid or incurred in connection with such default. No waiver or annulment shall extend to or affect any subsequent Event of Default or impair any right or remedy consequent on such Event of Default.

**SECTION 7.5** **No Remedy Exclusive.** All rights and remedies provided in this Agreement are cumulative, nonexclusive and in addition to any and all rights and remedies that the Issuer and the Trustee may have or may be given by reason of any law, statute, ordinance or otherwise.

**SECTION 7.6** **No Waiver.** No delay or omission to exercise any right or power accruing upon any Event of Default under this Agreement shall impair any such right or power or shall be construed to be a waiver of such Event of Default, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

**SECTION 7.7** **No Notices.** In order to entitle the Issuer to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Article or by any Bond Document.

**SECTION 7.8** **Expenses.** In the event the Borrower should default under this Agreement and the Issuer employs attorneys or incurs other expenses for the collection of payments under, or the enforcement of performance or observance of any obligation or agreement on the part of the Borrower contained in, this Agreement, the Borrower agrees that it will pay, on demand, to the Issuer the reasonable fees of such attorneys and such other expenses so incurred by the Issuer.

## **ARTICLE VIII** **MISCELLANEOUS**

**SECTION 8.1** **Notices.** All notices, certificates or other communications provided in this Agreement shall be given in writing, and shall be sufficiently given and shall be deemed given if given in the manner provided in Section 13.4 of the Indenture. Copies of each notice, certificate or other communication given under this Agreement by any party shall be given to the other parties. By notice given under this Agreement, any party may designate further or different addresses to which subsequent notices, certificates or other communications are to be sent. A duplicate copy of each notice, certificate, request or other communication given under this Agreement to the Issuer, the Borrower or the Trustee shall also be given to the Credit Provider and the Loan Servicer.

**SECTION 8.2** **Amendment.** No amendment to this Agreement shall be binding upon the parties to this Agreement until such amendment is reduced to writing and executed by such parties; provided, however, that no amendment, supplement or other modification to this Agreement or any other Bond Document shall be effective without the prior written consent of the Credit Provider, subject to the provisions of Section 8.12.

**SECTION 8.3** **Entire Agreement.** This Agreement is one agreement in a set of agreements, documents and instruments representing an integrated transaction. The agreements, documents and instruments are the Transaction Documents. The Transaction Documents contain all agreements between the parties to the integrated transaction, and there are no other representations, warranties, promises, agreements or understandings, oral, written or implied, among them, unless reference is made in a Transaction Document. Nothing in this Agreement shall relieve the Borrower of its obligations under the Loan Documents and the Credit Facility Documents.



**SECTION 8.4 Binding Effect.** This Agreement is a continuing obligation and shall (i) be binding upon each of the parties to this Agreement and their successors and assigns and (ii) inure to the benefit of and be enforceable by such parties and their respective successors, transferees and assigns; provided, however, that the Borrower may not assign all or any part of this Agreement without the prior written consent of the Issuer.

**SECTION 8.5 Further Assurances and Corrective Instruments.** The parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such amendments to this Agreement and to the other Transaction Documents contemplated by this Agreement as reasonably may be required to carry out the intention of, or to facilitate the performance of this Agreement, or to perfect or give further assurances of any of the rights granted or provided for in this Agreement.

**SECTION 8.6 Severability.** Should one or more of the provisions of this Agreement be held to be invalid, illegal or unenforceable in any jurisdiction, such provision shall be severable from the remainder as to such jurisdiction and the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired in any jurisdiction.

**SECTION 8.7 Execution in Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**SECTION 8.8 Governing Law.** This Agreement shall be construed, and the obligations, rights and remedies of the parties under this Agreement shall be determined, in accordance with the laws of the State without regard to conflicts of laws principles, except to the extent that the laws of the United States of America may prevail.

**SECTION 8.9 WAIVER OF JURY TRIAL.** THE BORROWER, THE ISSUER AND THE TRUSTEE (A) COVENANT AND AGREE NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING UNDER THIS AGREEMENT TRIABLE BY A JURY AND (B) WAIVE ANY RIGHT TO TRIAL BY JURY TO THE EXTENT THAT ANY SUCH RIGHT NOW EXISTS OR SHALL LATER EXIST. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL BY THE BORROWER, AND THIS WAIVER IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A JURY TRIAL WOULD OTHERWISE ACCRUE. FURTHER, THE BORROWER CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF THE ISSUER (INCLUDING, BUT NOT LIMITED TO, THE ISSUER'S COUNSEL) HAS REPRESENTED, EXPRESSLY OR OTHERWISE, TO THE BORROWER THAT THE ISSUER WILL NOT SEEK TO ENFORCE THE PROVISIONS OF THIS SECTION.

**SECTION 8.10 Limited Liability of the Issuer.** All obligations of the Issuer under this Agreement, the Regulatory Agreement and the Indenture shall be limited obligations of the Issuer, payable solely and only from the Trust Estate. No owner or owners of any of the Bonds shall ever have the right to compel any exercise of the taxing power of the State or any political subdivision or other public body for the payment of the Bonds, nor to enforce the payment of the

Bonds against any property of the State or any such political subdivision or other public body, including the Issuer except as provided in the Indenture. No member, officer, agent, employee or attorney of the Issuer, including any person executing this Agreement on behalf of the Issuer, shall be liable personally under this Agreement. No recourse shall be had for the payment of the principal of or the interest on the Bonds, for any claim based on or in respect of the Bonds or based on or in respect of this Agreement, against any member, officer, employee or agent, as such, of the Issuer or any successor whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance of this Agreement and as part of the consideration for the issuance of the Bonds, expressly waived and released.

**SECTION 8.11 Term of this Agreement.** This Agreement shall be in full force and effect from its date to and including such date as all of the Bonds are fully paid or retired (or provision for such payment shall have been made as provided in the Indenture); provided, however, that Sections 2.5 and 5.5 and Articles III and VI shall survive the termination of this Agreement.

**SECTION 8.12 References to the Credit Provider.** All provisions in this Agreement regarding consents, approvals, directions, waivers, appointments, requests or other actions by the Credit Provider shall be deemed not to require or permit such consents, approvals, directions, waivers, appointments, requests or other actions and shall be read as if the Credit Provider were not mentioned (i) if a Wrongful Dishonor has occurred and is continuing, or (ii) from and after the date on which the Credit Facility is declared to be null and void by final judgment of a court of competent jurisdiction; provided, however, that the payment of any amounts due to the Credit Provider pursuant to this Agreement shall continue in full force and effect. The foregoing shall not affect any other rights of the Credit Provider. All provisions in this Agreement relating to the rights of the Credit Provider shall be of no force and effect if the Credit Facility has terminated or expired in accordance with its terms and there are no Pledged Bonds or Bonds in which the Credit Provider has a security interest and all amounts owing to the Credit Provider under the Reimbursement Agreement have been paid.

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The parties to this Agreement have caused this Financing Agreement to be executed by their duly authorized representatives as of the date set forth above.

J. RENÉÉ BASTIAN

**COUNTY OF SAN BERNARDINO**

Attest:

By \_\_\_\_\_  
Thomas R. Laurin, Director  
Department of Economic and Community  
Development

\_\_\_\_\_  
Clerk of the Board

APPROVED AS TO FORM BY  
RONALD D. REITZ, COUNTY COUNSEL

By \_\_\_\_\_  
Michelle D. Blakemore, Deputy

[SIGNATURE PAGE FOR FINANCING AGREEMENT]

**BNY WESTERN TRUST COMPANY,**  
as Trustee

By \_\_\_\_\_  
Authorized Signatory

[SIGNATURE PAGE FOR FINANCING AGREEMENT]

WLP Parkview Place Apartments, LLC,  
a Delaware limited liability company,

By: Lewis Operating Corp., a California corporation  
Its Sole Manager,

By: \_\_\_\_\_  
Authorized Agent

[SIGNATURE PAGE FOR FINANCING AGREEMENT]